

#28829

OF TEXAS, U.S. DISTRICT COURT  
NORTHERN DISTRICT OF TEXAS  
FILED  
FEB 12 2009  
CLERK, U.S. DISTRICT COURT  
By RL  
Deputy

**V.**

**Defendant.**

**CAUSE NO.** \_\_\_\_\_

**3-09CV0281-G**

COMES NOW Jaime Davidson, M.D., referred to below at times as “Plaintiff”, complaining of Metropolitan Life Insurance Company d/b/a “MetLife” as Administrative Agent of the Disability Income Insurance Business of Allmerica Financial Life Insurance and Annuity Company, referred to below at times as “Defendant”, and would respectfully show the following:

## I.

2. Defendant MetLife is organized to do business under the laws of the State of New York. This Defendant has its principal office in New York or Florida. This Defendant does

business in the state of Texas, including Dallas County, Texas, and has minimum contacts with the State of Texas such that this Court's exercise of jurisdiction over it will not offend traditional notions of fair play or substantial justice. This Defendant can be served with process by serving its officer at One Madison Avenue, New York, NY 10010.

## II.

### **JURISDICTION AND VENUE**

3. Jurisdiction and venue are proper in this District Court for the Northern District of Texas pursuant to 28 U.S.C. §1332(a), as this suit involves a controversy between parties of diverse citizenship, and the amount in controversy exceeds the sum of \$75,000.00 (excluding interest and costs). Plaintiff would show this Court that the parties in this proceeding are completely diverse. Venue is proper in this United States District Court for the Northern District of Texas because all or a substantial part of the claims set forth below occurred in the Northern District of Texas and because the Defendant is subject to personal jurisdiction in the Northern District of Texas at the time of the commencement of this action. Venue is also proper in this District Court in that the policy at issue and the Rider at issue were procured in the Northern District of Dallas County, Texas.

## III.

### **BACKGROUND FACTS**

4. Many years ago the Plaintiff purchased an individual disability income policy with Allmerica Financial Life Insurance and Annuity Company (Policy No. S 059 757-400, referenced to below as the "Policy"). The Defendant acts as the Administrative Agent for the Disability Insurance Business of Allmerica Financial Life Insurance and Annuity Company.

5. The Plaintiff paid premiums on the Policy for many years.

6. Unfortunately, Dr. Davidson was diagnosed with advanced stage Hodgkin's disease in late 2004 after a febrile illness and loss of stamina. He developed severe bleomycin lung injury and had respiratory failure. In the midst of chemotherapy he experienced several episodes where he fell and was diagnosed with severe neuropathy secondary to his chemotherapy. He suffered foot drop, numbness, and weakness in his lower and upper extremities. The problem with his lower extremities worsened and persisted over time. Rehabilitation did not improve his condition. Today, the Plaintiff continues to suffer from severe foot drop in both extremities, which is notably worse in his right foot. According to the Plaintiff's treating physician, Dr. Davidson is precluded from resuming his office and hospital practice of endocrinology. The Plaintiff's treating physician has specifically opined that the Plaintiff is disabled.

7. The Policy (which the Defendant has acknowledged, in writing, is an individual disability income policy and thus not an ERISA plan or part of an ERISA plan) defines total disability or totally disabled as "sickness or injury (that) makes you unable to engage in your regular occupation". The Policy defines residual disability or residually disabled as "that although you are engaging in an occupation, injury or sickness causes you to earn at least 20% less than your base earnings." Dr. Davidson's "regular occupation" at the time that he purchased the policy at issue was that of a practicing endocrinologist, caring for patients in the office and hospital setting.

8. The Defendant paid residual disability benefits to the Plaintiff in response to a claim that he submitted for a short period of time. After that, the Defendant refused to pay benefits based upon earnings that Dr. Davidson received by engaging in work other than work done as part of his "regular occupation" (i.e.: a practicing endocrinologist).

9. The Defendant has completely ignored the fact that the Plaintiff also purchased a Regular Occupation Rider to the Policy years ago (while he was working as a full-time clinical endocrinologist). This Rider provides as follows:

**TOTAL DISABILITY BENEFITS ARE PAYABLE IF SICKNESS OR INJURY MAKES YOU UNABLE TO ENGAGE IN YOUR REGULAR OCCUPATION. YOUR REGULAR OCCUPATION MEANS YOUR OCCUPATION WHEN DISABILITY BEGINS. TOTAL DISABILITY BENEFITS BEGIN AFTER THE ELIMINATION PERIOD AND ARE PAYABLE EVEN IF YOU ARE ACTUALLY WORKING IN ANOTHER OCCUPATION.**

10. The Plaintiff was forced to stop seeing and treating patients all together in November 2006 because of his disability, and has not engaged in his "regular occupation" since that period of time.

11. Under the terms of the Regular Occupation Rider, the Plaintiff is entitled to total disability benefits under the terms of the policy at issue even though he has been – and continues to – work in another occupation.

12. Multiple written demands have been made by the Plaintiff upon the Defendant for tender of these benefits. Unfortunately, the Defendant has failed/refused to tender benefits due and owing.

13. Additionally, and incredibly, the Defendant is contending that it is owed monies from the Plaintiff for an alleged "overpayment" made to the Plaintiff under the terms of the Policy at issue.

14. The truth is that the Plaintiff does not owe any monies to the Defendant. Instead, the Plaintiff is due total disability benefits, including all applicable cost of living adjustments, from December 1, 2006 to the present date, and on a monthly basis going forward.

15. Unfortunately, the Plaintiff's medical problems (which are well documented) continue, and are not expected to improve. He remains under a physician's care. The Plaintiff remains disabled (under the terms of the Rider) today.

IV.

**CAUSE OF ACTION COUNT I:**  
**BREACH OF CONTRACT**

16. Plaintiff realleges and incorporates the facts and allegations set forth above as if they were set forth at length herein in support of this Count I.

17. By failing/refusing to tender benefits properly due the Plaintiff under the terms of the Policy and the Rider as obligated the Defendant has committed a material breach of contract.

18. This material breach has proximately caused economic damages to the Plaintiff for which he now sues, to the fullest extent of the law.

19. These damages include all benefits due under the terms of the Policy and the Rider at issue, including all applicable cost of living adjustments, all reasonable and necessary attorney's fees that the Plaintiff has incurred relating to his claim for same, pre-judgment and post judgment interest at the highest rates permitted by law, and all taxable costs of court.

V.

**CAUSE OF ACTION COUNT II:**  
**BREACH OF THE DUTY OF GOOD FAITH AND FAIR DEALING**

20. Plaintiff realleges and incorporates the facts and allegations set forth above as if they were set forth at length herein in support of this Count II.

21. As discussed herein, there is an insurance contract by and between the parties to this proceeding. This contract (the Policy and the Rider) created a duty of good faith and fair dealing on the part of the Defendant.

22. The Defendant breached this duty in certain material respects. More specifically, the Defendant breached this duty when it denied or delayed payment when liability was reasonably clear. Additionally and/or alternatively, this Defendant failed to service its insured on a reasonable basis, and failed to investigate the Plaintiff's claims thoroughly and in good faith.

23. This breach has proximately caused economic damages to the Plaintiff for which he now sues, to the fullest extent of the law.

24. These damages include all actual damages that the Plaintiff has sustained in this action (including all benefits due under the terms of the Policy and the Rider), exemplary damages in an amount deemed just and appropriate by the trier of fact, pre-judgment and post judgment interest at the highest rates permitted by law, and all taxable costs of court.

## VI.

### **CAUSE OF ACTION COUNT III: DECEPTIVE TRADE PRACTICES AND VIOLATION(S) OF THE TEXAS INSURANCE CODE**

25. Plaintiff realleges and incorporates the facts and allegations set forth above as if they were set forth at length herein in support of this Count III.

26. By engaging in the wrongful actions and conduct described herein, the Defendant has violated Chapter 541 of the Texas Insurance Code.

27. The Plaintiff has standing to sue under this Chapter, as he is a "person" who has been injured by the Defendant's deceptive acts or practices in the business of insurance. Additionally, the Defendant is a "person" as defined in this Chapter as it is a legal entity engaged in the business of insurance.

28. The Defendant misrepresented the benefits/advantages promised by the Policy and Rider at issue. Additionally and/or alternatively, the Defendant caused confusion and/or misunderstanding as to the goods/services to be provided; represented that the goods/services had characteristics and/or benefits that they (according to the Defendant) did not have; represented that the goods/services were of particular standard, quality, or grade when they were of another; represented that the Policy and the Rider conferred or involved rights, remedies, or obligations that, according to the Defendant, it/they did not have; misrepresented a material fact or policy provision; failed/refused to pay Plaintiff's claims without conducting a reasonable or timely investigation; failed/refused to provide a reasonable explanation in support of its delays and/or denials; and/or failed/refused to effectuate a prompt, fair, and equitable settlement when liability on the Plaintiff's claims became reasonably clear.

29. The wrongful actions and conduct described above were a producing cause (and a proximate cause) of economic damages to the Plaintiff for which he now sues, to the fullest extent of the law. These damages include all actual damages sustained (including all proceeds due under the terms of the Policy and the Rider), additional/treble damages because the wrongful actions and conduct were committed knowingly, pre-judgment and post judgment interest at the highest rates permitted by law, all taxable costs of court, and all reasonable and necessary attorney's fees that the Plaintiff has incurred in the prosecution of this action

## **VII.**

### **CAUSE OF ACTION COUNT IV:** **BAD FAITH**

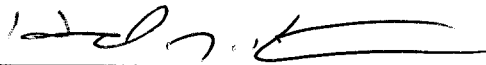
30. Plaintiff realleges and incorporates the facts and allegations set forth above as if they were set forth at length herein in support of this Count IV.

31. The wrongful actions and conduct of the Defendant that are described herein constitute bad faith as defined by applicable law. The Plaintiff alleges that the Defendant delayed or denied payment on the Plaintiff's claims when liability became reasonably clear, and without any reasonable basis. Accordingly, the Plaintiff seeks and is entitled to recover all damages available to him under applicable law, including all actual damages sustained, exemplary damages in an amount deemed just and appropriate by the trier of fact, pre-judgment and post judgment interest at the highest rates permitted by law, and all taxable costs of court.

WHEREFORE, PREMISES CONSIDERED, Plaintiff Jaime Davidson, M.D. respectfully prays that this Petition be received and filed and, upon final trial of this cause, that he have and recover from and against Defendant Metropolitan Life Insurance Company d/b/a MetLife all of the relief prayed for herein and for such further relief, both at law and in equity, to which he may show himself justly entitled

Respectfully submitted,

**FEE, SMITH, SHARP & VITULLO, L.L.P.**



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**HOWARD J. KLATSKY**

State Bar No. 00786024

Three Galleria Tower

13155 Noel Road, Suite 1000

Dallas, Texas 75240

(972) 934-9100

(972) 934-9200 [Fax]

**ATTORNEY FOR PLAINTIFF**



JS 44 (Rev. 12/07)

CIVIL COVER SHEET **3-09CV0281-G**

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

## I. (a) PLAINTIFFS

JAMES DAVIDSON, M.D.

(b) County of Residence of First Listed Plaintiff

(EXCEPT IN U.S. PLAINTIFF CASES)

DALLAS

(c) Attorney's (Firm Name, Address, and Telephone Number)

FEE, SMITH, SHARP & VITTO, LLP  
13155 NOAL ROAD, ST 1000  
DALLAS, TX 75240

## DEFENDANTS

METROPOLITAN LIFE  
INSURANCE COMPANY

County of Residence of First Listed Defendant

(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE  
LAND INVOLVED.

Attorneys (If Known)

FEB 12 2009

CLERK, U.S. DISTRICT COURT  
NORTHERN DISTRICT OF TEXAS

## II. BASIS OF JURISDICTION

(Place an "X" in One Box Only)

☐ 1 U.S. Government  
Plaintiff☐ 3 Federal Question  
(U.S. Government Not a Party)☐ 2 U.S. Government  
Defendant☒ 4 Diversity  
(Indicate Citizenship of Parties in Item III)III. CITIZENSHIP OF PRINCIPAL PARTIES  
(For Diversity Cases Only)

Citizen of This State	<input checked="" type="checkbox"/> 1	<input type="checkbox"/> 1	Incorporated or Principal Place of Business In This State	<input type="checkbox"/> 4	<input type="checkbox"/> 4
Citizen of Another State	<input type="checkbox"/> 2	<input checked="" type="checkbox"/> 2	Incorporated and Principal Place of Business In Another State	<input type="checkbox"/> 5	<input checked="" type="checkbox"/> 5
Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6

## IV. NATURE OF SUIT

(Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input checked="" type="checkbox"/> 110 Insurance	<input type="checkbox"/> 310 Airplane	<input type="checkbox"/> 610 Agriculture	<input type="checkbox"/> 422 Appeal 28 USC 158	<input type="checkbox"/> 400 State Reapportionment
<input type="checkbox"/> 120 Marine	<input type="checkbox"/> 315 Airplane Product Liability	<input type="checkbox"/> 620 Other Food & Drug	<input type="checkbox"/> 423 Withdrawal 28 USC 157	<input type="checkbox"/> 410 Antitrust
<input type="checkbox"/> 130 Miller Act	<input type="checkbox"/> 320 Assault, Libel & Slander	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881	<b>PROPERTY RIGHTS</b>	<input type="checkbox"/> 430 Banks and Banking
<input type="checkbox"/> 140 Negotiable Instrument	<input type="checkbox"/> 330 Federal Employers' Liability	<input type="checkbox"/> 630 Liquor Laws	<input type="checkbox"/> 820 Copyrights	<input type="checkbox"/> 450 Commerce
<input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment	<input type="checkbox"/> 340 Marine	<input type="checkbox"/> 640 R.R. & Truck	<input type="checkbox"/> 830 Patent	<input type="checkbox"/> 460 Deportation
<input type="checkbox"/> 151 Medicare Act	<input type="checkbox"/> 345 Marine Product Liability	<input type="checkbox"/> 650 Airline Regs.	<input type="checkbox"/> 840 Trademark	<input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations
<input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans)	<input type="checkbox"/> 350 Motor Vehicle	<input type="checkbox"/> 660 Occupational Safety/Health	<b>SOCIAL SECURITY</b>	<input type="checkbox"/> 480 Consumer Credit
<input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits	<input type="checkbox"/> 355 Motor Vehicle Product Liability	<input type="checkbox"/> 690 Other	<input type="checkbox"/> 861 HIA (1395ff)	<input type="checkbox"/> 490 Cable/Sat TV
<input type="checkbox"/> 160 Stockholders' Suits	<input type="checkbox"/> 360 Other Personal Injury	<b>LABOR</b>	<input type="checkbox"/> 862 Black Lung (923)	<input type="checkbox"/> 810 Selective Service
<input type="checkbox"/> 190 Other Contract	<b>PERSONAL INJURY</b>	<input type="checkbox"/> 710 Fair Labor Standards Act	<input type="checkbox"/> 863 DIWC/DIWW (405(g))	<input type="checkbox"/> 850 Securities/Commodities/Exchange
<input type="checkbox"/> 195 Contract Product Liability	<input type="checkbox"/> 362 Personal Injury - Med. Malpractice	<input type="checkbox"/> 720 Labor/Mgmt. Relations	<input type="checkbox"/> 864 SSID Title XVI	<input type="checkbox"/> 875 Customer Challenge 12 USC 3410
<input type="checkbox"/> 196 Franchise	<input type="checkbox"/> 365 Personal Injury - Product Liability	<input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act	<input type="checkbox"/> 865 RSI (405(g))	<input type="checkbox"/> 890 Other Statutory Actions
<b>REAL PROPERTY</b>	<input type="checkbox"/> 368 Asbestos Personal Injury Product Liability	<input type="checkbox"/> 740 Railway Labor Act	<b>FEDERAL TAX SUITS</b>	<input type="checkbox"/> 891 Agricultural Acts
<input type="checkbox"/> 210 Land Condemnation	<b>PERSONAL PROPERTY</b>	<input type="checkbox"/> 790 Other Labor Litigation	<input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant)	<input type="checkbox"/> 892 Economic Stabilization Act
<input type="checkbox"/> 220 Foreclosure	<input type="checkbox"/> 370 Other Fraud	<input type="checkbox"/> 791 Empl. Ret. Inc. Security Act	<input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 893 Environmental Matters
<input type="checkbox"/> 230 Rent Lease & Ejectment	<input type="checkbox"/> 371 Truth in Lending	<b>IMMIGRATION</b>		<input type="checkbox"/> 894 Energy Allocation Act
<input type="checkbox"/> 240 Torts to Land	<input type="checkbox"/> 380 Other Personal	<input type="checkbox"/> 462 Naturalization Application		<input type="checkbox"/> 895 Freedom of Information Act
<input type="checkbox"/> 245 Tort Product Liability	<input type="checkbox"/> 385 Property Damage	<input type="checkbox"/> 463 Habeas Corpus - Alien Detainee		<input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice
<input type="checkbox"/> 290 All Other Real Property	<input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 465 Other Immigration Actions		<input type="checkbox"/> 950 Constitutionality of State Statutes
<b>CIVIL RIGHTS</b>	<input type="checkbox"/> 390 Other Personal			
<input type="checkbox"/> 441 Voting	<input type="checkbox"/> 395 Other Personal			
<input type="checkbox"/> 442 Employment	<input type="checkbox"/> 400 Other Civil Rights			
<input type="checkbox"/> 443 Housing/Accommodations				
<input type="checkbox"/> 444 Welfare				
<input type="checkbox"/> 445 Amer. w/Disabilities - Employment				
<input type="checkbox"/> 446 Amer. w/Disabilities - Other				
<input type="checkbox"/> 440 Other Civil Rights				

## V. ORIGIN

(Place an "X" in One Box Only)

☒ 1 Original Proceeding ☐ 2 Removed from State Court ☐ 3 Remanded from Appellate Court ☐ 4 Reinstated or Reopened ☐ 5 Transferred from another district (specify) ☐ 6 Multidistrict Litigation ☒ 7 Appeal to District Judge from Magistrate Judgment

## VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):

28 U.S.C. § 1332 (a)

Brief description of cause:

Breach of contract, good faith fair dealing, DTPA, bad faith

## VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

DEMAND \$

CHECK YES only if demanded in complaint:

JURY DEMAND: ☒ Yes ☐ No

## VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE

DOCKET NUMBER

DATE

SIGNATURE OF ATTORNEY OF RECORD

2/11/09

FOR OFFICE USE ONLY

RECEIPT #

AMOUNT

APPLYING IFP

JUDGE

MAG. JUDGE